

PTO Form 1830 (Rev 9/2007)

OMB No. 0651-0050 (Exp. 4/30/2009)

## Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
<b>SERIAL NUMBER</b>	78873139
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 114
<b>MARK SECTION (no change)</b>	
<b>ARGUMENT(S)</b>	
<p>Reconsideration of this application in view of the accompanying remarks is respectfully requested.</p> <p>The Examining Attorney has twice refused registration of Applicant's mark under Trademark Act Section 2(e)(1), 15 U.S.C. § 1052(e)(1) on the grounds that the mark OSTEO PLATFORM merely describes the goods recited in the application. The Office Action alleges that the proposed mark describes an ingredient, quality, characteristic, function, feature, purpose, or use of the relevant goods, and, in support of the allegation, relies on the attached "dictionary definitions" of OSTEO and PLATFORM. The identification of goods in the application is clear. In order to support the rejection, the Examining Attorney must prove that "OSTEO PLATFORM" merely describes a medical apparatus, namely, vibration plates for therapeutic purposes. As shown herein, the material attached to the Office Action and the arguments presented in the Office Action do not provide an adequate basis to support the refusal to register. It is respectfully submitted that the refusal should be withdrawn since OSTEO PLATFORM is a unique identifier that Applicant has associated with a medical apparatus for therapeutic purposes.</p> <p>To determine whether a mark is descriptive or suggestive, the courts and the U.S. Trademark Office Trial and Appeal Board frequently use the "degree of imagination test." See, e.g., <u>No Nonsense Fashions, Inc. v. Consolidated Foods Corp.</u>, 226 U.S.P.Q. 502, 507 (TTAB 1995). "A term is suggestive if it requires imagination, thought and perception to reach a conclusion as to the nature</p>	

of the goods.” Stix Products, Inc. v. United Merchants & Mfrs., Inc., 160 U.S.P.Q. 777, 785 (S.D.N.Y. 1968). “If the mental leap between the word and the product’s attributes is not almost instantaneous, this strongly indicates suggestiveness, not direct descriptiveness.” McCarthy, McCarthy on Trademarks and Unfair Competition, 3<sup>rd</sup> ed. pp. 11-109 (1996) (citing Inventacorp Inc. v. Arabian Investment Banking Corp., 19 U.S.P.Q.2d 1056 (11<sup>th</sup> Cir. 1991)).

It is respectfully submitted that OSTEO PLATFORM in no way instantaneously describes a medical apparatus, namely vibration plates for therapeutic purposes. In reality, OSTEO PLATFORM is a composite phrase[1] which may be suggestive at best, since PLATFORM actually connotes a “system on which programs or operating systems operate” (see attached definitions) and not merely “a raised level service on which people or things stand” as contended by the Examining Attorney. In accordance with a search performed on GOOGLE for the word PLATFORM, “PLATFORM” has different meanings depending on how the term is used. However, the first page of Google, showing 9,490,000 hits for the word, illustrates that platform refers to of or relating to computer software and programs and operating system platforms (see printout of first page of google search). The word platform in no way describes a medical apparatus used for therapeutic purposes. Thus, the term “PLATFORM” is suggestive because it requires imagination, thought and perception to reach a conclusion as to the nature of the goods and the mental leap between the word and the product’s attributes is not almost instantaneous. Accordingly, linking together “OSTEO” and “PLATFORM” creates an impressive sounding composite non-sequitur, which, by definition, cannot “describe” the goods it is accused of describing. A new and unique commercial impression has been created by the composite phrase. According to the Trademark Manual of Examining Procedure §1209.03(d), “a mark comprising a combination of merely descriptive components is registrable if the combination of terms creates a unitary mark with a unique, nondescriptive meaning, or if the composite has a bizarre or incongruous meaning as applied to the goods.”

•

Indeed, to paraphrase the analysis stated in Airco, Inc. v. Air Products & Chemicals Inc., 196 U.S.P.Q. 832, 835 (TTAB 1977): “the literal meaning of the mark [OSTEO PLATFORM] may,

through an exercise of mental gymnastics and extrapolation suggest or hint at the nature of applicant's [goods], i.e., [medical apparatus, namely, vibration plates used for therapeutic purposes], but it does not, in any clear or precise way, serve to describe those [goods]." Thus the "imagination test" strongly supports the conclusion that OSTEO PLATFORM is not descriptive of a medical apparatus for therapeutic purposes.

The next inquiry in a determination of descriptiveness or suggestiveness is the "competitor's need test." See, e.g., No Nonsense Fashions, Inc., *supra* at 508. The "need test" focuses on the extent to which a mark is actually needed by competitors to identify their goods. It is respectfully submitted that the applicant's competitors do not need to use the mark OSTEO PLATFORM to identify their own medical apparatus, namely, vibration plates for therapeutic purposes, i.e., what competitor *needs* to use this phrase to describe a medical apparatus? The answer is: it is not necessary, especially in view of the incongruous meaning of the mark.

Furthermore, a Google search of the word OSTEO PLATFORM did not result in any hits (see attached first page of hits) using the two words together. Accordingly, companies are not using the term for vibration plates for therapeutic purposes.

The Examining Attorney attempts to provide evidence of the alleged descriptive nature of the proposed mark, but the excerpts attached to the Office Action include what appears to be the present applicant's proposed goods. There is no other "public use" citation contained in the Office Action. In essence, the Examining Attorney has cited no usage of OSTEO PLATFORM, other than copies of the Applicant's website, that create any nexus between OSTEO PLATFORM and a medical apparatus, namely vibration plates, for therapeutic purposes. Indeed, the Examining Attorney has failed to find any instances of use, other than the present applicant's, which joins the terms "OSTEO" and "PLATFORM" for a description of any product or service, thus supporting Applicant's position on the "competitor's need test". It is respectfully submitted that the evidence provided are wholly inadequate to support an objection based on descriptiveness. Furthermore, it is also respectfully submitted that

the two definition citations which does not even link the two words together is wholly inadequate to support an objection based on descriptiveness. Reconsideration of the descriptiveness rejection is respectfully requested.

Accordingly, and in view of the remarks set forth above, it is believed that the application is in condition for allowance and placement on the Principal Register. The Examining Attorney is urged to contact Applicant's attorney at the number indicated if there are any remaining issues to be resolved.

[1] The determination of whether the composite mark has a descriptive significance turns upon the question of whether the combination of terms evokes a new and unique commercial impression. See TMEP §1209.03(d).

### EVIDENCE SECTION

EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	<a href="http://tgate/PDF/RFR/2007/10/19/20071019125924226747-78873139-002_001/evi_16720620620-172838958_.googlesearch.platform.pdf">http://tgate/PDF/RFR/2007/10/19/20071019125924226747-78873139-002_001/evi_16720620620-172838958_.googlesearch.platform.pdf</a>
CONVERTED PDF FILE(S) (2 pages)	<a href="\\TICRS2\EXPORT14\788\731\78873139\xml1\RFR0002.JPG">\\TICRS2\EXPORT14\788\731\78873139\xml1\RFR0002.JPG</a>
	<a href="\\TICRS2\EXPORT14\788\731\78873139\xml1\RFR0003.JPG">\\TICRS2\EXPORT14\788\731\78873139\xml1\RFR0003.JPG</a>
ORIGINAL PDF FILE	<a href="http://tgate/PDF/RFR/2007/10/19/20071019125924226747-78873139-002_002/evi_16720620620-172838958_.googlesearch.osteoplatform.pdf">http://tgate/PDF/RFR/2007/10/19/20071019125924226747-78873139-002_002/evi_16720620620-172838958_.googlesearch.osteoplatform.pdf</a>
CONVERTED PDF FILE(S) (2 pages)	<a href="\\TICRS2\EXPORT14\788\731\78873139\xml1\RFR0004.JPG">\\TICRS2\EXPORT14\788\731\78873139\xml1\RFR0004.JPG</a>
	<a href="\\TICRS2\EXPORT14\788\731\78873139\xml1\RFR0005.JPG">\\TICRS2\EXPORT14\788\731\78873139\xml1\RFR0005.JPG</a>
DESCRIPTION OF EVIDENCE FILE	a copy of the first page of google search results for the word "platform" and a copy of the first page of google search results for the word "osteoplatform"

### SIGNATURE SECTION

RESPONSE SIGNATURE	/David M. Carter/
SIGNATORY'S NAME	David M. Carter
SIGNATORY'S POSITION	Attorney for Applicants
DATE SIGNED	10/19/2007
AUTHORIZED SIGNATORY	YES

CONCURRENT APPEAL NOTICE FILED	NO
<b>FILING INFORMATION SECTION</b>	
SUBMIT DATE	Fri Oct 19 12:59:24 EDT 2007
TEAS STAMP	USPTO/RFR-167.206.206.20- 20071019125924226747-7887 3139-400e51431ad637af770d 1b3e017d750da8d-N/A-N/A-2 0071018172838958781

PTO Form 1930 (Rev 9/2007)

OMB No. 0651-0050 (Exp. 4/30/2009)

### Request for Reconsideration after Final Action

#### To the Commissioner for Trademarks:

Application serial no. **78873139** has been amended as follows:

#### ARGUMENT(S)

**In response to the substantive refusal(s), please note the following:**

Reconsideration of this application in view of the accompanying remarks is respectfully requested.

The Examining Attorney has twice refused registration of Applicant's mark under Trademark Act Section 2(e)(1), 15 U.S.C. § 1052(e)(1) on the grounds that the mark OSTEO PLATFORM merely describes the goods recited in the application. The Office Action alleges that the proposed mark describes an ingredient, quality, characteristic, function, feature, purpose, or use of the relevant goods, and, in support of the allegation, relies on the attached "dictionary definitions" of OSTEO and PLATFORM. The identification of goods in the application is clear. In order to support the rejection, the Examining Attorney must prove that "OSTEO PLATFORM" merely describes a medical apparatus, namely, vibration plates for therapeutic purposes. As shown herein, the material attached to the Office Action and the arguments presented in the Office Action do not provide an adequate basis to support the refusal to register. It is respectfully submitted that the refusal should be withdrawn since OSTEO PLATFORM is a unique identifier that Applicant has associated with a medical apparatus for therapeutic purposes.

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#### **EVIDENCE**

Evidence in the nature of a copy of the first page of google search results for the word "platform" and a copy of the first page of google search results for the word "osteo platform" has been attached.

##### **Original PDF file:**

[http://tgate/PDF/RFR/2007/10/19/20071019125924226747-78873139-002\\_001/evi\\_16720620620-172838958\\_.googlesearch.platform.pdf](http://tgate/PDF/RFR/2007/10/19/20071019125924226747-78873139-002_001/evi_16720620620-172838958_.googlesearch.platform.pdf)

##### **Converted PDF file(s) (2 pages)**

Evidence-1

Evidence-2

##### **Original PDF file:**

[http://tgate/PDF/RFR/2007/10/19/20071019125924226747-78873139-002\\_002/evi\\_16720620620-172838958\\_.googlesearch.osteoplatform.pdf](http://tgate/PDF/RFR/2007/10/19/20071019125924226747-78873139-002_002/evi_16720620620-172838958_.googlesearch.osteoplatform.pdf)

##### **Converted PDF file(s) (2 pages)**

Evidence-1

Evidence-2

#### **SIGNATURE(S)**

##### **Request for Reconsideration Signature**

Signature: /David M. Carter/ Date: 10/19/2007

Signatory's Name: David M. Carter

Signatory's Position: Attorney for Applicants

The signatory has confirmed that he/she is either (1) an attorney who is a member in good standing of the bar of the highest court of a U.S. state; or (2) a Canadian attorney/agent who has been granted reciprocal recognition under 37 C.F.R. §10.14(c) by the USPTO's Office of Enrollment and Discipline. He/she further confirms that (1) the applicant has not previously been represented in this matter by an authorized attorney; and (2) he/she is the applicant's attorney or an associate of that attorney.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 78873139



Internet Transmission Date: Fri Oct 19 12:59:24 EDT 2007  
TEAS Stamp: USPTO/RFR-167.206.206.20-200710191259242  
26747-78873139-400e51431ad637af770d1b3e0  
17d750da8d-N/A-N/A-20071018172838958781

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### Platform (computing) - Wikipedia, the free encyclopedia

In computing, a platform describes some sort of framework, either in hardware or software, which allows software to run. Typical platforms include a ...  
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### platform Definition: TechEncyclopedia from TechWeb

platform - A hardware and/or software architecture that serves as a foundation or base.  
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server platform - A family of servers that includes the hardware and operating system.  
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### [webkit-dev] A platform define for the Cocoa port?

What I was thinking is that we can add a PLATFORM(COCOA) define to > Platform.h and define it when \_\_OBJC\_\_ and \_\_APPLE\_\_ are defined. ...  
[lists.macosforge.org/pipermail/webkit-dev/2006-June/001129.html](http://lists.macosforge.org/pipermail/webkit-dev/2006-June/001129.html) - 5k -  
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I want to define it so that my tagline makes sense to people :-). \* Web 2.0 is my niche topic. ... For corporate people, the Web is a platform for business. ...  
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### rpm package manager

The use of this > platform define should be kept as minimal as possible, of course. But > for the few special cases where it is required it is really ...  
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Re: ugly but necessary platform define ... The purpose of the current RPM\_PLATFORM\_XXX define is to give one a general hint what the host platform is, ...  
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**[ScienceDirect - Scripta Materialia : Fabrication of osteo ...](#)**

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instability, and 5 knees (3 rheumatoid and 2 osteo-. arthritis) developed symptomatic subluxation of the. rotating platform. One of these subluxating poly- ...

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health economic assessment of interventions in osteo-. porosis. It builds on an earlier platform published several. years previously [2]. ...

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**[Osteoporosis board: vibration training \[Archive\] - HealthBoards ...](#)**

i have read this is showing good results for osteo..anyone tried it? ... I have used a Soloflex WBV platform for over 4 months now, two 10-minute sessions ...

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Each rat was placed on a Plexiglas platform in. the prone position. ... placed on the

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